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JAMES R. BROWNING,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 823

SIMS MOTOR TRANSPORT LINES, INC.,
an Illinois Corporation,
Appellant,

vs.

UNITED STATES OF AMERICA,
INTERSTATE COMMERCE COMMISSION,
Appellee.

On Appeal from the United States District Court
For the Northern District of Illinois

REPLY TO MOTION TO AFFIRM

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QUESTION PRESENTED

In its Brief the government refers to the authority of Sims to transport "iron and steel articles." It does mention in a footnote on page 2 that "iron and steel and articles made thereof" is included in the authority granted. This, of course, is the fact (J. St. 7), and the broader authority must, of course, be considered.

ARGUMENT

The government's Motion to Affirm ignores the basic question before the Court at this time. Our argument was directed to showing that the questions presented are of sufficient importance to warrant the attention of this Court.

This is in accord with Rule 15 (f) of this Court, which provides that a jurisdictional statement shall state "the reasons why the questions presented are so substantial as to require plenary consideration with briefs on the merits and oral argument for their resolution." This question is the main thrust of our argument (J. St. 16, 18, 31), and one which the government ignores.

The point now is something more than whether the decision of the lower court was right or wrong. The question now is whether we should be allowed to fully brief and argue all these points before this Court. The value of oral argument is well recognized, and we believe that we have stated a case of sufficient importance to warrant our day in court.

For example, we argued that not only has the "Description Case" been misused in this instance, but that it is a continuing policy on the part of the Commission to misuse that case. As we pointed out in our original Brief (J. St. 12-18), the Commission (with the erroneous approval of the lower court) has come to *say* that it is giving independent consideration to the problems before it, while as a matter of fact it relies more and more heavily on "Descriptions." Merely saying something doesn't make it so. In that connection (J. St. 15), we cited a case later than this one which, relying on this case, followed the

same path. This demonstrates the trend which is being established, and which will gather momentum like a two-ton truck going down a mountain, if this Court does not put on the brakes.

Similarly, the question of whether this certificate was "interpreted" or "modified" is of great importance and should be examined by this Court. The question is whether the Commission shall be allowed to *say* it is "interpreting" a certificate, and thus, as by an incantation, change what is in fact a modification into an interpretation. It is what the Commission *does*, that counts, not what it says. As we pointed out in our original Brief (J. St. 16-18), what the Commission did here was actually to severely restrict the long-established meaning of the authority of Sims Motor Company. Surely this is not a mere "interpretation."

We further showed in our original Brief (J. St. 26-29) that the Commission's decision was inconsistent with prior decisions. Of course, we did not cite a case precisely like this one, because, so far as we know, there has been none. Naturally, we argued from analogies. And since that Brief was written a further inconsistency has developed. *Starr's Transportation, Inc.* (No. MC 117147, reprinted C.C.H. Federal Carriers Reporter § 34, 870), decided April 4, 1960, held that plywood doors (a manufactured product) were included in an authority to transport "plywood products." If this is the trend the Commission is now taking, then surely it was out of line in the instant case.

The government concludes its Brief with the oft-repeated cry that "The Commission interpretation of its own permits, and certificates 'is controlling on the courts unless clearly erroneous'." We believe that we have demon-

strated in our principal Brief that the Commission's interpretation is indeed "clearly erroneous." And further, we respectfully submit that in this case (and undoubtedly in many others), a blind and unwarranted reliance is habitually placed upon the findings of administrative bodies. In our system of government as established by the Constitution, the courts, not administrative bodies, are the proper arbitrators of disputes between the government and private persons.

CONCLUSION.

Substantial questions are presented by this appeal. We feel very strongly that we are entitled to fully present this question to this Court, and that an affirmance in the absence of such a presentation would not be proper.

Respectfully submitted.

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